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CAO GROUP, INC.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DEN-MAT HOLDINGS, LLC,

Plaintiff/Counter-
Defendant,

v.

CAO GROUP, INC.,

Defendant/Counter-
Plaintiff.

Case No.: 2-18-cv-6358-CAS-JEM

[PROPOSED] PROTECTIVE ORDER

Judge: Hon. Christina A. Snyder

1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This

Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

2. DESIGNATING PROTECTED MATERIAL

2.1 Over- Designation Prohibited. Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that designator must promptly notify all parties that it is withdrawing the mistaken designation.

2.2 Manner and Timing of Designations. Designation under this Order

1 requires the designator to affix the applicable legend (“CONFIDENTIAL,” “HIGHLY
2 CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL –
3 SOURCE CODE”) to each page that contains protected material. For testimony given
4 in deposition or other proceeding, the designator shall specify all protected testimony
5 and the level of protection being asserted. It may make that designation during the
6 deposition or proceeding, or may invoke, on the record or by written notice to all
7 parties on or before the next business day, a right to have up to 21 days from the
8 deposition or proceeding to make its designation.

9 **2.2.1** A party or non-party that makes original documents or
10 materials available for inspection need not designate them for protection until after the
11 inspecting party has identified which material it would like copied and produced.
12 During the inspection and before the designation, all material shall be treated as
13 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting party
14 has identified the documents it wants copied and produced, the producing party must
15 designate the documents, or portions thereof, that qualify for protection under This
16 Order.

17 **2.2.2** Parties shall give advance notice if they expect a deposition or
18 other proceeding to include designated material so that the other parties can ensure that
19 only authorized individuals are present at those proceedings when such material is
20 disclosed or used. The use of a document as an exhibit at a deposition shall not in any
21 way affect its designation. Transcripts containing designated material shall have a
22 legend on the title page noting the presence of designated material, and the title page
23 shall be followed by a list of all pages (including line numbers as appropriate) that have
24 been designated, and the level of protection being asserted. The designator shall inform
25 the court reporter of these requirements. Any transcript that is prepared before the
26 expiration of the 21-day period for designation shall be treated during that period as if
27 it had been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
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1 unless otherwise agreed. After the expiration of the 21-day period, the transcript shall
2 be treated only as actually designated.

3 **2.3 Inadvertent Failures to Designate.** An Inadvertent failure to
4 designate does not, standing alone, waive protection under this Order. Upon timely
5 assertion or correction of a designation, all recipients must make reasonable efforts to
6 ensure that the material is treated according to this Order.

7 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 All challenges to confidentiality designations shall proceed under L.R. 37-1
9 through L.R. 37-4.

10 **4. ACCESS TO DESIGNATED MATERIAL**

11 **4.1 Basic Principles.** A receiving party may use designated material only for
12 this litigation. Designated material may be disclosed only to the categories of persons
13 and under the conditions described in this Order.

14 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**

15 Unless otherwise ordered by the Court or permitted in writing by the designator,
16 a receiving party may disclose any material designated CONFIDENTIAL only to:

17 **4.2.1** The receiving party's outside counsel of record in this action and
18 employees of outside counsel of record to whom disclosure is reasonably necessary;

19 **4.2.2** The officers, directors, and employees of the receiving party to
20 whom disclosure is reasonably necessary, and who have signed the Agreement to Be
21 Bound (Exhibit A);

22 **4.2.3** Experts retained by the receiving party's outside counsel of record
23 to whom disclosure is reasonably necessary, and who have signed the Agreement to Be
24 Bound (Exhibit A);

25 **4.2.4** The Court and its personnel;

1 **4.2.5** Outside court reporters and their staff, professional jury or trial
2 consultants, and professional vendors to whom disclosure is reasonably necessary, and
3 who have signed the Agreement to Be Bound (Exhibit A);

4 **4.2.6** During their depositions, witnesses in the action to whom disclosure
5 is reasonably necessary and who have signed the Agreement to Be Bound (Exhibit A);
6 and

7 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
8 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
9 **Further Approval.** Unless permitted in writing by the designator, a receiving party
10 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES
11 ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further approval
12 only to:

13 **4.3.1** The receiving party's outside counsel of record in this action and
14 employees of outside counsel of record to whom it is reasonably necessary to disclose
15 the information;

16 **4.3.2** The Court and its personnel;

17 **4.3.3** Outside court reporters and their staff, professional jury or trial
18 consultants, and professional vendors to whom disclosure is reasonably necessary, and
19 who have signed the Agreement to Be Bound (Exhibit A); and

20 **4.3.4** The author or recipient of a document containing the material, or a
21 custodian or other person who otherwise possessed or knew the information.

22 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
23 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL**
24 **– SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in
25 writing by the designator:

26 **4.4.1** A party seeking to disclose to in-house counsel any material
27 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
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1 make a written request to the designator providing the full name of the in-house
2 counsel, the city and state of such counsel's residence, and such counsel's current and
3 reasonably foreseeable future primary job duties and responsibilities in sufficient detail
4 to determine present or potential involvement in any competitive decision-making. In-
5 house counsel are not authorized to receive material designated HIGHLY
6 CONFIDENTIAL – SOURCE CODE.

7 **4.4.2** A party seeking to disclose to an expert retained by outside counsel
8 of record any information or item that has been designated HIGHLY
9 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
10 SOURCE CODE must first make a written request to the designator that (1) identifies
11 the general categories of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
12 or HIGHLY CONFIDENTIAL – SOURCE CODE information that the receiving
13 party seeks permission to disclose to the expert, (2) sets forth the full name of the expert
14 and the city and state of his or her primary residence, (3) attaches a copy of the expert's
15 current resume, (4) identifies the expert's current employer(s), (5) identifies each person
16 or entity from whom the expert has received compensation or funding for work in his
17 or her areas of expertise (including in connection with litigation) in the past five years,
18 and (6) identifies (by name and number of the case, filing date, and location of court)
19 any litigation where the expert has offered expert testimony, including by declaration,
20 report, or testimony at deposition or trial, in the past five years. If the expert believes any
21 of this information at (4) - (6) is subject to a confidentiality obligation to a third party,
22 then the expert should provide whatever information the expert believes can be disclosed
23 without violating any confidentiality agreements, and the party seeking to disclose the
24 information to the expert shall be available to meet and confer with the designator
25 regarding any such confidentiality obligations.

26 **4.4.3** A party that makes a request and provides the information specified
27 in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-
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1 house counsel or expert unless, within seven days of delivering the request, the party
2 receives a written objection from the designator providing detailed grounds for the
3 objection.

4 **4.4.4** All challenges to objections from the designator shall proceed under
5 23 L.R. 37-1 through L.R. 37-4.

6 **5. SOURCE CODE**

7 **5.1 Designation of Source Code.** If production of source code is necessary, a
8 party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or
9 includes, confidential, proprietary, or trade secret source code.

10 **5.2 Location and Supervision of Inspection.** Any HIGHLY
11 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made available
12 for inspection, in a format allowing it to be reasonably reviewed and searched, during
13 normal business hours or at other mutually agreeable times, at an office of the
14 designating party's counsel or another mutually agreeable location. The source code
15 shall be made available for inspection on a secured computer in a secured room, and the
16 inspecting party shall not copy, remove, or otherwise transfer any portion of the source
17 code onto any recordable media or recordable device. The designator may visually
18 monitor the activities of the inspecting party's representatives during any source code
19 review, but only to ensure that there is no unauthorized recording, copying, or
20 transmission of the source code.

21 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may request
22 paper copies of limited portions of source code that are reasonably necessary for the
23 preparation of court filings, pleadings, expert reports, other papers, or for deposition or
24 trial. The designator shall provide all such source code in paper form, including Bates
25 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE."

26 **5.4 Access Record.** The inspecting party shall maintain a record of any
27 individual who has inspected any portion of the source code in electronic or paper
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1 form, and shall maintain all paper copies of any printed portions of the source code in a
2 secured, locked area. The inspecting party shall not convert any of the information
3 contained in the paper copies into any electronic format other than for the preparation
4 of a pleading, exhibit, expert report, discovery document, deposition transcript, or other
5 Court document. Any paper copies used during a deposition shall be retrieved at the
6 end of each day and must not be left with a court reporter or any other unauthorized
7 individual.

8 **6. PROSECUTION BAR**

9 Absent written consent from the designator, any individual who receives access
10 to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
11 CONFIDENTIAL – SOURCE CODE information shall not be involved in the
12 prosecution of patents or patent applications concerning the field of the invention of
13 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or
14 other affiliate during the pendency of this action and for one year after its conclusion,
15 including any appeals. “Prosecution” means drafting, amending, advising on the
16 content of, or otherwise affecting the scope or content of patent claims or specifications.
17 These prohibitions shall not preclude counsel from participating in reexamination or
18 *inter partes* review proceedings to challenge or defend the validity of any patent, but
19 counsel may not participate in the drafting of amended claims in any such proceedings.

20 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED** 21 **PRODUCED IN OTHER LITIGATION**

22 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
23 compliance with a lawful subpoena or court order. The purpose of the duties described
24 in this section is to alert the interested parties to the existence of this Order and to give
25 the designator an opportunity to protect its confidentiality interests in the court where
26 the subpoena or order issued.

1 **7.2 Notification Requirement.** If a party is served with a subpoena or a court
2 order issued in other litigation that compels disclosure of any information or items
3 designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –
4 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE, that
5 party must:

6 **7.2.1** Promptly notify the designator in writing. Such notification shall
7 include a copy of the subpoena or court order;

8 **7.2.3** Cooperate with all reasonable procedures sought by the designator
9 whose material may be affected.

10 **7.3 Wait for Resolution of Protective Order.** If the designator timely seeks
11 a protective order, the party served with the subpoena or court order shall not produce
12 any information designated in this action as CONFIDENTIAL, HIGHLY
13 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
14 SOURCE CODE before a determination by the court where the subpoena or order
15 issued, unless the party has obtained the designator’s permission. The designator shall
16 bear the burden and expense of seeking protection of its confidential material in that
17 court.

18 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED**
19 **MATERIAL**

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
21 designated material to any person or in any circumstance not authorized under this
22 Order, it must immediately (1) notify in writing the designator of the unauthorized
23 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated
24 material, (3) inform the person or persons to whom unauthorized disclosures were
25 made of all the terms of this Order, and (4) use reasonable efforts to have such person
26 or persons execute the Agreement to Be Bound (Exhibit A).

1 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
2 **OTHERWISE PROTECTED MATERIAL**

3 When a producing party gives notice that certain inadvertently produced material
4 is subject to a claim of privilege or other protection, the obligations of the receiving
5 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-
7 discovery order that provides for production without prior privilege review pursuant to
8 Federal Rule of Evidence 502(d) and (e).

9 **10. FILING UNDER SEAL**

10 Without written permission from the designator or a Court order, a party may not
11 file in the public record in this action any designated material. A party seeking to file
12 under seal any designated material must comply with L.R. 79-5.1. Filings may be made
13 under seal only pursuant to a court order authorizing the sealing of the specific material
14 at issue. The fact that a document has been designated under this Order is insufficient
15 to justify filing under seal. Instead, parties must explain the basis for confidentiality of
16 each document sought to be filed under seal. Because a party other than the designator
17 will often be seeking to file designated material, cooperation between the parties in
18 preparing, and in reducing the number and extent of, requests for under seal filing is
19 essential. If a ***receiving party's*** request to file designated material under seal
20 pursuant to L.R. 79-5.1 is denied by the Court, then the receiving party ***may file the***
21 ***material in the public record*** unless (1) ***the designator*** seeks reconsideration
22 within four days of the denial, or (2) as otherwise instructed by the Court.


23 **11. FINAL DISPOSITION**

24 Within 60 days after the final disposition of this action, each party shall return all
25 designated material to the designator or destroy such material, including all copies,
26 abstracts, compilations, summaries, and any other format reproducing or capturing any
27 designated material. The receiving party must submit a written certification to the
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designator by the 60- day deadline that (1) identifies (by category, where appropriate) all the designated material that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain designated material. Any such archival copies remain subject to this Order.

IT IS SO ORDERED.

DATED: March 13, 2019


United States Magistrate Judge